



**CITY OF SAN ANTONIO  
PARKS AND RECREATION DEPARTMENT  
REQUEST FOR PROPOSALS (“RFP”)**

**FOR  
THE TOWER OF THE AMERICAS**



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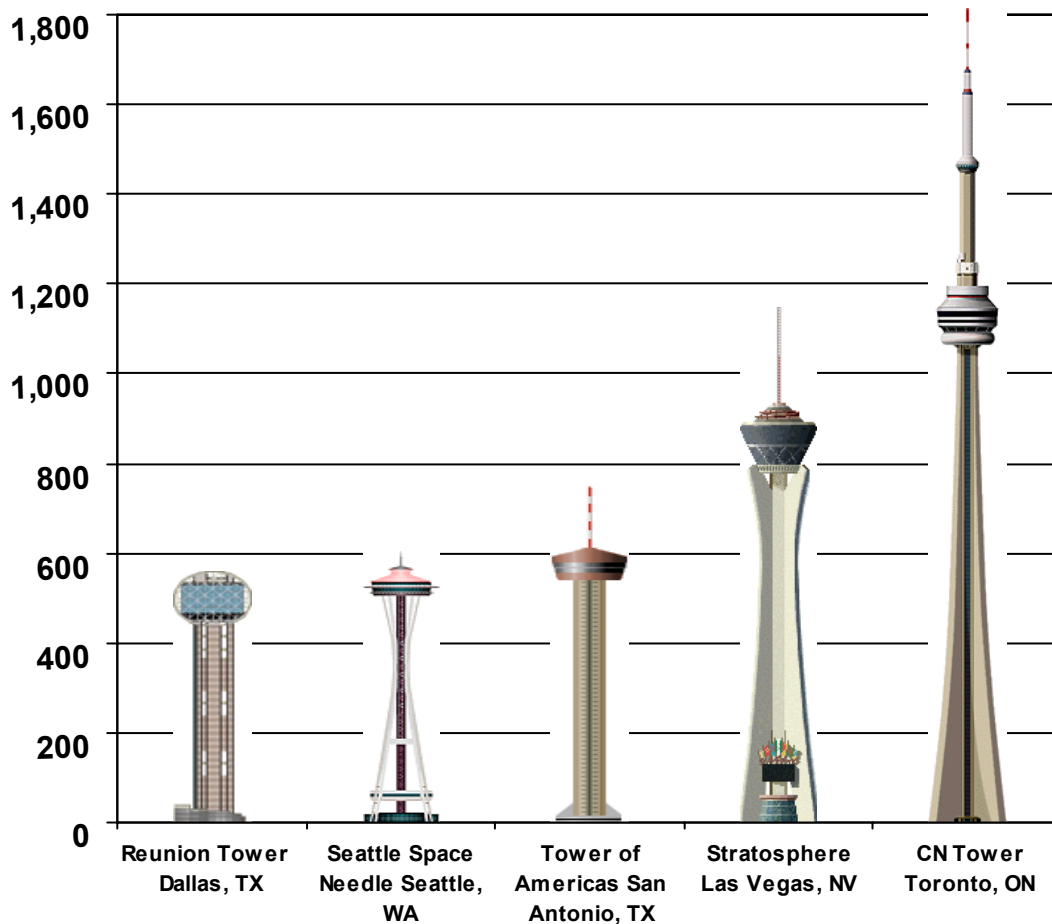
## **I. BACKGROUND**

The City of San Antonio (*“City”*) is pleased to announce a unique and exciting opportunity that is now available to a high quality, innovative Company or Joint Venturers to manage and operate Tower of the Americas (*“Tower”*). The operator will be responsible for all operations of this landmark attraction including:

- Revolving Restaurant
- Observation Deck/Elevators/Ground Floor
- Retail Merchandise
- Parking

Other Attractions and Food Service operations that you may suggest will be considered if they meet the guidelines in this document.

## North American Towers Height Comparison



In March 1990, renovations to Tower of the Americas were completed, including major interior refinishing of the public observation level and the installation of eight panoramic panels. These panels feature photographs that highlight major sites visible from the Tower, and this level features special interior lighting designed to provide spectacular nighttime viewing. Cosmetic renovation has also occurred on the Restaurant level.

The Tower Restaurant operating contract will expire at the end of August, 2004 and the City, which leases the Restaurant space and operates the remainder of the Tower facilities, has decided to exit operating management of these facilities in order to place the Tower under single management.

## **AN EXCITING OPPORTUNITY**

Today, Tower of the Americas is poised for the next step in establishing its position as a point of pride for San Antonio, Texas and the United States. We are looking for a dynamic company that will add its unique vision and management expertise to assist us in making Tower of the Americas an exciting destination for our visitors.



*Tower of the Americas on the Riverwalk - San Antonio, Texas*

*A view of Tower of the Americas from the City of San Antonio's famous River Walk*

### **The City of San Antonio**

San Antonio captures the spirit of Texas. Now the ninth largest city in the United States, the city has retained its sense of history and tradition, while carefully blending in cosmopolitan progress. The city has always been a crossroads and a meeting place. Sounds and flavors of Native Americans, Old Mexico, Germans, the Wild West, African-Americans and the Deep South mingle and merge. Close to eight million visitors a year delight in the discovery of San Antonio's charms.



For history buffs, San Antonio is a mecca. Native Americans first lived along the San Antonio River, calling the area “Yanaguana,” which means “refreshing waters,” or “clear waters.” A band of Spanish explorers and missionaries came upon the river in 1691, and because it was the feast day of St. Anthony, they named the river “San Antonio.”



The actual founding of the city came in 1718 by Father Antonio Olivares, when he established Mission San Antonio de Valero; which in 1836 became permanently etched in the annals of history as “The Alamo” where 189 defenders held the old mission against some 4,000 Mexican troops for 13 days. The cry “Remember the Alamo” became the rallying point of the Texan revolution against Mexico. Located in the heart of downtown, today The Alamo is a shrine and museum.

Amidst the daily hubbub of the busy metropolitan downtown and sequestered 20 feet below street level, lies one of San Antonio's jewels - the Paseo del Rio. Better known as the “River Walk,” these cobblestone and flagstone paths border both sides of the San Antonio River as it winds its way through the middle of the business district. The River Walk has multiple personalities - quiet and park-like in some stretches, while other areas are full of activity with European-style sidewalk cafés, specialty boutiques, nightclubs and gleaming high-rise hotels.

The River Walk stretches for approximately two-and-a-half miles from the Municipal Auditorium and Conference Center on the north end to the King William Historic District



on the south. Yanaguana Cruises, the river's floating transportation system, provides a novel method of sightseeing and people-watching in downtown San Antonio. Groups can also dine aboard open-air cruisers as they wind their way along the scenic waterway. River taxis deliver visitors to Rivercenter, a dazzling three-level glass shopping, dining and entertainment complex, and to the newly expanded Henry B. Gonzalez Convention Center right at the base of Tower of the Americas.

Completed in 1968, the Tower stands as a proud reminder of HemisFair, Texas' World's Fair, for which it was the theme structure. The Tower is a triumphant feat of architectural and engineering skills and is still one of the tallest freestanding structures in the Western Hemisphere (see chart which follows). The observation deck is encircled by an outdoor walkway which enhances the sensation of height above the Alamo City and the Restaurant circles this same view hourly.

## History of HemisFair Park<sup>3</sup>



The idea for HemisFair '68 began in 1959, when local business leaders began discussing a fair to commemorate the 250<sup>th</sup> anniversary of the founding of San Antonio and San Antonio's shared cultural heritage with its neighbor nations of Latin America.

HemisFair '68 was a huge undertaking, requiring a great deal of planning and funding. The total project cost was \$156 million and financing was achieved through private and public support with approximately ten corporations and twenty governments sponsoring

pavilions. Public support included \$12.5 million from the Urban Renewal Agency for purchase of the site; \$30 million in public approved municipal bonds for construction of the convention center, arena, and river extension; \$5.5 million in City government underwriting for the construction of Tower of the Americas; and \$10 million state appropriate primarily for the construction of the Institute of Texas Cultures and two appropriations of \$6.75 million from the United States Congress for the construction of the United States pavilion.

A 92.6 acre site on the southeastern edge of the central San Antonio business district was chosen as the site of HemisFair '68, and designated as an Urban Renewal Site.

HemisFair's landmark themed structure was to be the 622 foot Tower of the Americas, designed by the firm of O'Neil Ford and Associates. The tower builders had to overcome political, legal, mechanical and labor problems. A private non-profit corporation, the San Antonio Tower Corporation was formed in 1966 and utilized the City's tax exempt status to make its bonds attractive to the market. This corporation was later replaced by the City as a result of a bond election approved by the voters on December 3, 1966. Ground was broken on the Tower on February 10, 1967.



<sup>3</sup> Source: HemisFair Park Redevelopment Pre-Plan, City of San Antonio Leadership Development Program, 2002. Team 1- Economic Development.



The theme of HemisFair was the “Confluence of Civilizations in the Americas.” HemisFair capitalized on San Antonio’s ethnically mixed cultural heritage and placed particular emphasis on the City as a future center of international commerce and cultural exchange between the United States and Latin America. More than thirty nations participated.

Since HemisFair ’68, HemisFair Park has remained dedicated to meeting the needs of San Antonio’s convention sector with the expansion of the Henry B Gonzalez Convention Center; an educational and cultural resource through long-term relations with the government of Mexico via the Universidad Nacional Autónoma de Mexico (UNAM)

and the Mexican Cultural Institute (MCI). The state and federal governments also have a significant presence with the State of Texas’ Institute of Texan Cultures, and the John H. Wood Federal Courthouse and adjacent Federal Building.





## **The Future Tower**

The City of San Antonio is open to proposals that reflect a new vision for what can occur at the Tower. Competitive Towers, Attractions and Restaurants have many elements that do not exist at Tower of the Americas. The City would consider, but not be limited to any of the following new elements for the Tower, if built and executed properly:

### **Ground Floor**

- ☐ Simulator Ride
- ☐ 3 or 4-D Theater
- ☐ Tower Light Show
- ☐ Films about the Tower and San Antonio
- ☐ Sidewalk Café
- ☐ New Retail Experiences
- ☐ Pre-Show Elements
- ☐ Upgraded Security System

### **Elevators**

- ☐ Themed Cabs
- ☐ Murals at either end of the Elevator Ride
- ☐ State of the Art Lighting

### **Observation Deck**

- ☐ Audio tours
- ☐ Character that Answers Guest Questions
- ☐ Touch Screens
- ☐ A moderately priced Dining Option
- ☐ Glass Floor
- ☐ Nighttime Show
- ☐ Nightclub

### **Restaurant**

- ☐ A Destination Bar
- ☐ Narratives and Signage tied to the View
- ☐ Design to Embellish the View
- ☐ High level Cuisine representative of:
  - ☐ Texas, South Texas or San Antonio
  - ☐ Mexico or the Americas

The City understands that it will be the right combination of elements which will combine to make the future Tower a “Must See” visitor and local resident destination.

## **FUTURE CONSIDERATIONS**

### **Convention Center Expansion**

**San Antonio's Henry B. González Convention Center** recently completed a \$218-million, six-year convention center expansion project, including new construction that increased the existing contiguous exhibit hall space to approximately 400,000 sq. ft., as well as the renovation of the existing exhibition space and meeting rooms. Altogether, the expansion increased the facility's building footprint from 540,000 gross sq. ft. to more than 1.3 million sq. ft., and includes 115,646 sq. ft. of meeting space that is divisible up to 67 ways. Pedestrian access to the Tower from the Convention Center has also been improved.

It is conceivable that during the proposed term of this Tower management agreement, the City will undertake another expansion of this facility, estimated to expand east and north of the existing facility. This expansion should not impact the immediate vicinity of the Tower, but the Tower Parking Deck could be impacted. The City acknowledges the importance of parking for the Tower and the operator, and will identify parking spaces for the operator within a reasonable distance of the tower and of a number equivalent to the number of displaced parking spaces, if any.

### **Master Plan for HemisFair Park**

City staff has been directed by City Council to initiate a Master Plan for the future development of HemisFair Park. This effort is scheduled to begin December, 2003 and conclude by the spring of 2004. It is anticipated that the solicitation and selection of the Tower operator should not be impacted by this plan, but the final plan may include recommendations for use and development of areas of HemisFair Park, to include improvements to way finding and transportation systems.

### **Convention Center Hotel**

The City has initiated a process to select a development partner for the future construction of a Convention Center Hotel. The site for this hotel is on Market Street adjacent to the Lila Cockrell Theater, which will place a major convention hotel in close proximity to the Tower. The hotel placement should not negatively impact the operations of the Tower; however, construction of a project this size may impact pedestrian and vehicular access to the Tower. The City has a long standing history of including access and signage requirements into major construction projects to protect the interests of adjacent businesses and venues.

## **RELEVANT DATA**

- Annual Tower of the Americas (Observation Deck) Attendance – 285,161 (2002)
- Annual Restaurant Guest Count – 140,000 (2002)
- The Restaurant level is approximately 7,091 square feet and has 312 seats. A bar level exists above the Restaurant and is approximately 2,983 square feet in size. Combined there is a total of approximately 10,074 useable square feet.
- The Observation Deck is approximately 7,500 square feet of interior and exterior space.
- The Ground Level has approximately 3,750 square feet of interior space

<b>FY 2002 Annual Revenues</b>	
Restaurant Concessionaire*	\$3,600,000
Observation Level	\$1,113,654
Total Revenues	\$4,713,654

\*Revenue includes food and beverage sales, elevator fees to restaurant, parking and vending machines.

Currently, the City operates the Observation Deck with the Restaurant under lease to an operator. Both revenue centers are currently operating at a good profit. Independent analysis indicates the market is significantly under-penetrated and the facility has excess capacity to accommodate more guests and sales. This is an excellent opportunity for your company to set new standards for guest experience and drive new levels of sales and profits.

***The City of San Antonio seeks Proposals from qualified Operators interested in providing the services described in this RFP.***

***For purposes of this RFP, the Operator will be defined as a Proposer, Sub-Contractors, or a collaborative of companies or individuals formed to respond to this RFP, or any combination thereof.***

## **GOALS OF THE CITY OF SAN ANTONIO FOR TOWER OF THE AMERICAS**

- ★ A high quality, notable Restaurant and Entertainment experience
- ★ Single Operator for the entire Facility
- ★ A Superior Guest Experience at the Tower:
  - Ground Level/Elevators
  - Observation Deck
  - Restaurant
- ★ Maintain a level of affordability for certain elements of the Tower
  - Elevator/Observation Area Admissions
  - Food concessions, exclusive of high-end dining
- ★ The City will fund major components of the Tower infrastructure (utilities, air-conditioning, etc.) in conjunction with improvements under the new contract. The Operator will upgrade the public and support spaces in accordance with their proposal.
- ★ Maintain an effective marketing and promotions effort
- ★ The City will receive a percentage rent, against a minimum rent, for all operating spaces
- ★ The City will have a landlord/tenant relationship with the new Operator as the tenant
- ★ In the end, provide the best product possible for visitors to the City and locals

The City of San Antonio desires to enhance the guest experience at Tower of the Americas.

With this perspective, you are asked to:

- 1) Provide creative solutions in the form of physical and operational enhancements to all existing aspects of the Tower guest experience.
- 2) Suggest new operations on the ground floor, observation deck and/or the restaurant level, including but not limited to new Food Service options, attractions, nighttime opportunities, retail and guest services/conveniences.
- 3) Define how the Tower will embrace San Antonio.
- 4) Provide your operational plan for enhancing the guest experience at the Tower.
- 5) Identify through marketing and other techniques how you will build sales, awareness and the image of the Tower.

## **CURRENT TOWER OF THE AMERICAS**



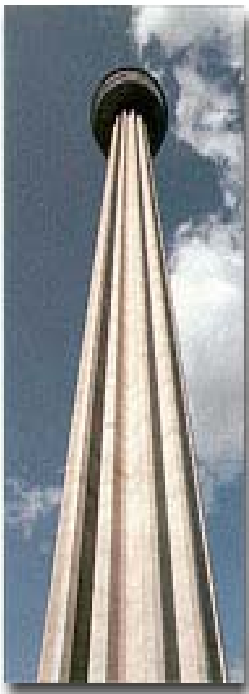
## **OBSERVATION DECK**

### THE TOWER OF THE AMERICAS

#### **Welcome to San Antonio's Crowning Jewel Tower Observation Deck**

Spectacular is the sight as you approach and gaze all the way up at this 750-foot, (to the tip of the antenna) free standing structure – one of the tallest in America. Anchoring the slender tower are 2,400 tons of reinforced concrete, placing its center of gravity below ground level.

The public observation level features two viewing areas.



The glass-enclosed room has telescopes, panoramic photo panels with multi-lingual descriptions and special interior lighting which affords spectacular night-time viewing. Then, step outside and take a walk around the entire circumference! The observation level and restrooms are fully accessible to the handicapped.

#### **Current Admission Rates**

Adults (12-54)	\$4.00
Children (4-11)	\$1.50
Under 4 years old	FREE
Seniors (55+)	\$2.50

#### **Current Hours of Operation**

Sunday –Thursday
9:00 a.m. to 10:00 p.m.
Friday –Saturday
9:00 a.m. to 11:00 p.m.

### **Current Restaurant**

The revolving Tower Restaurant provides 360 degree views of San Antonio.

### **Current Lounge**

The lounge is located above the restaurant.

#### **TOWER RESTAURANT HOURS**

**The Tower Restaurant is open every day except Christmas**

#### **LUNCH**

Mon. – Fri. 11:00 a.m. – 2:00 p.m.

Sat. – Sun. 11:00 a.m. – 2:30 p.m.

#### **LOUNGE**

Sun. – Thur. Closes at 11:00 p.m.

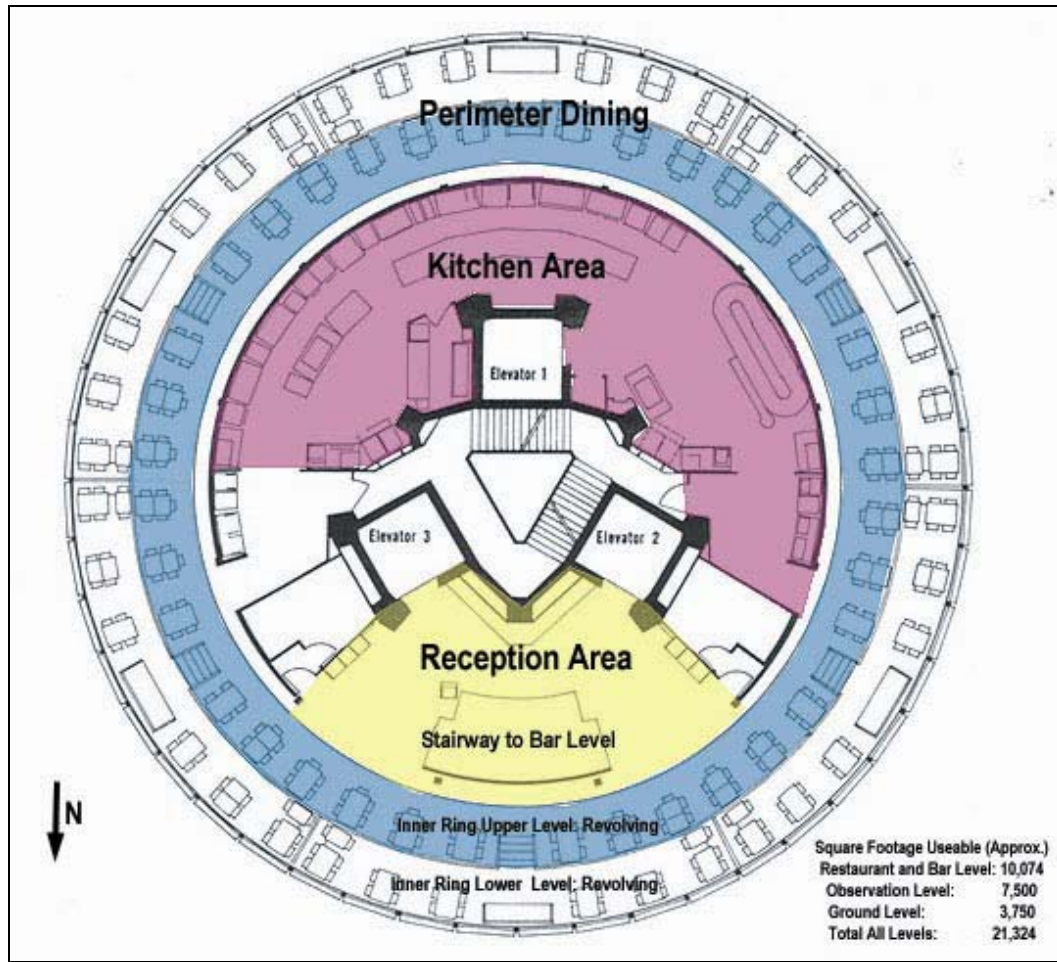
Fri. – Sat. Closes at midnight

#### **DINNER**

Sun. – Thur. 5:30 p.m. – 10:00 p.m.

Fri. – Sat. 5:30 p.m. – 10:30 p.m.

## DIAGRAM OF RESTAURANT



**As built maps of the Tower of the Americas are available for viewing at two locations:**

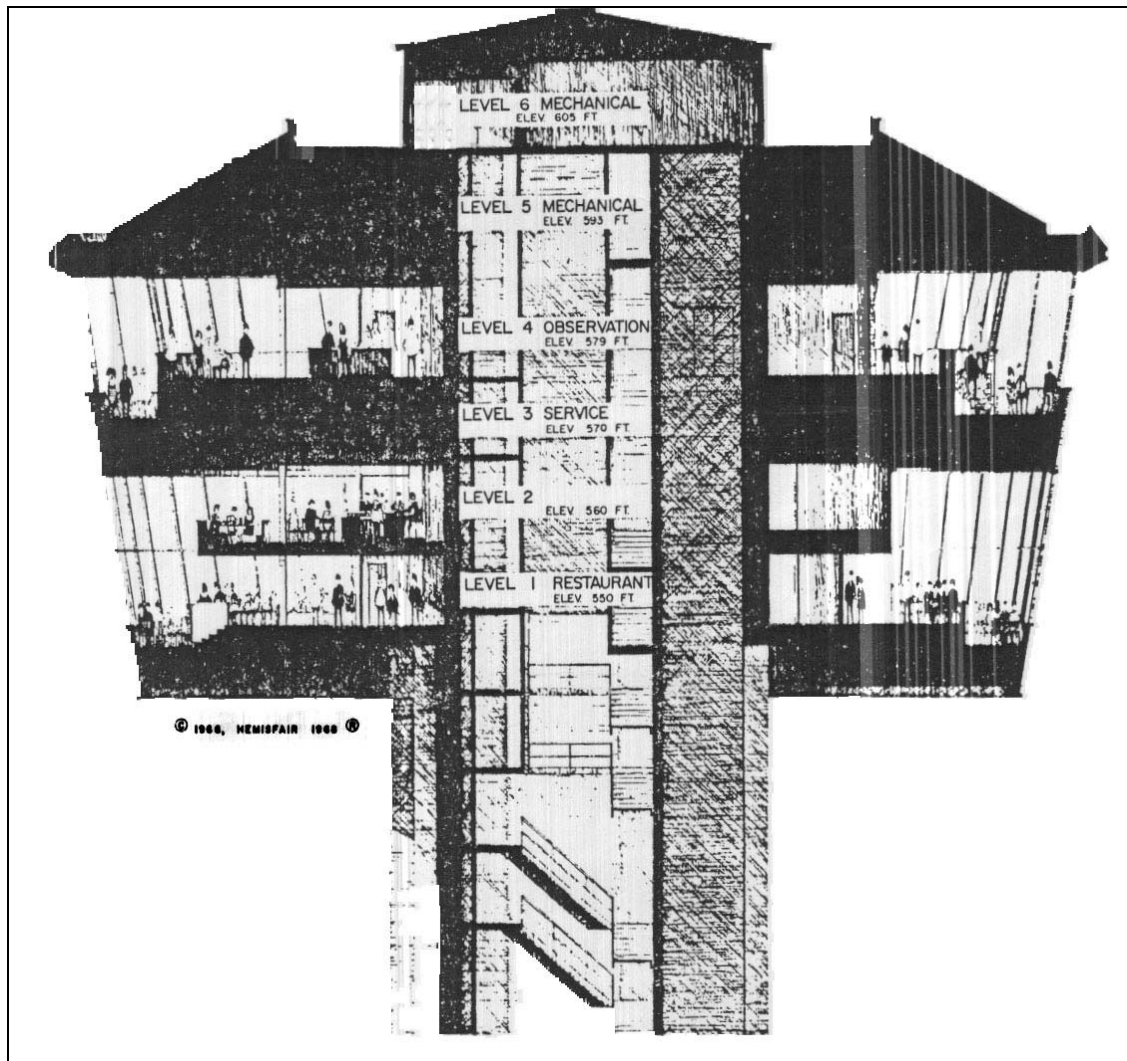
City of San Antonio  
Parks and Recreation Department  
Park Projects Services  
506 Dolorosa, Room 103  
San Antonio, Texas 78205  
(210) 207-2879

Ridgeway's Inc.  
600 Broadway Ave.  
San Antonio, Texas 78215  
(210) 227-7181

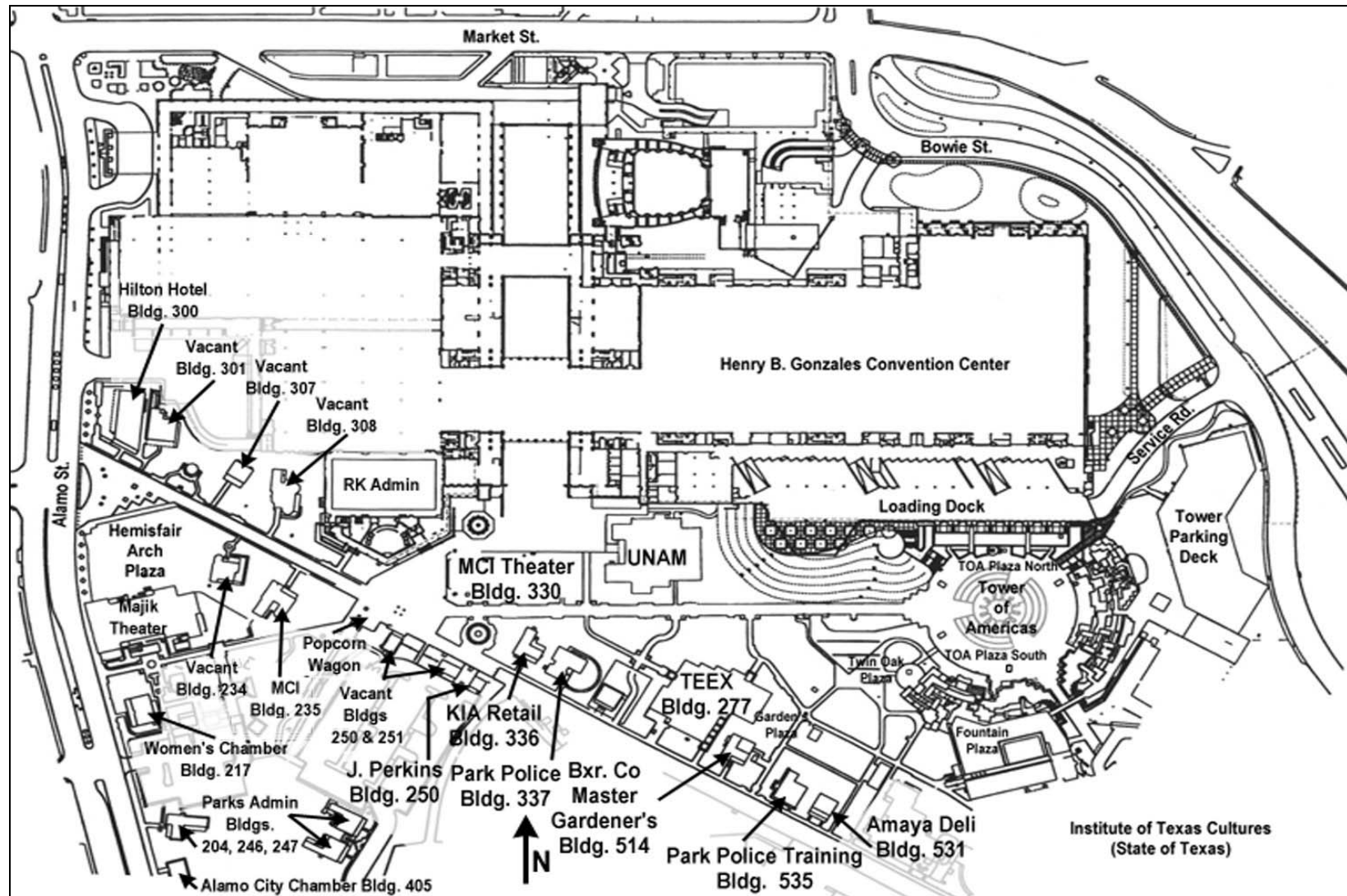
Copies of these maps may be made at Ridgeway's, Inc. and all costs for duplication services are the responsibility of the proposer. Viewing of maps at the Parks Department's, Parks Projects Services is available during normal business hours; Monday – Friday 7:45 a.m. to 4:30 p.m.

The Final Report of the Structural, Architectural, Mechanical and Electrical Analysis of the Tower of the Americas as submitted by James T. Rodriguez, Consulting Engineers is also available for viewing at both locations and duplication costs for copies of this document are also the responsibility of the proposer.

## Cross Section Tower Elevation



## HEMISFAIR PARK SITE PLAN 2003



## **PARKING**

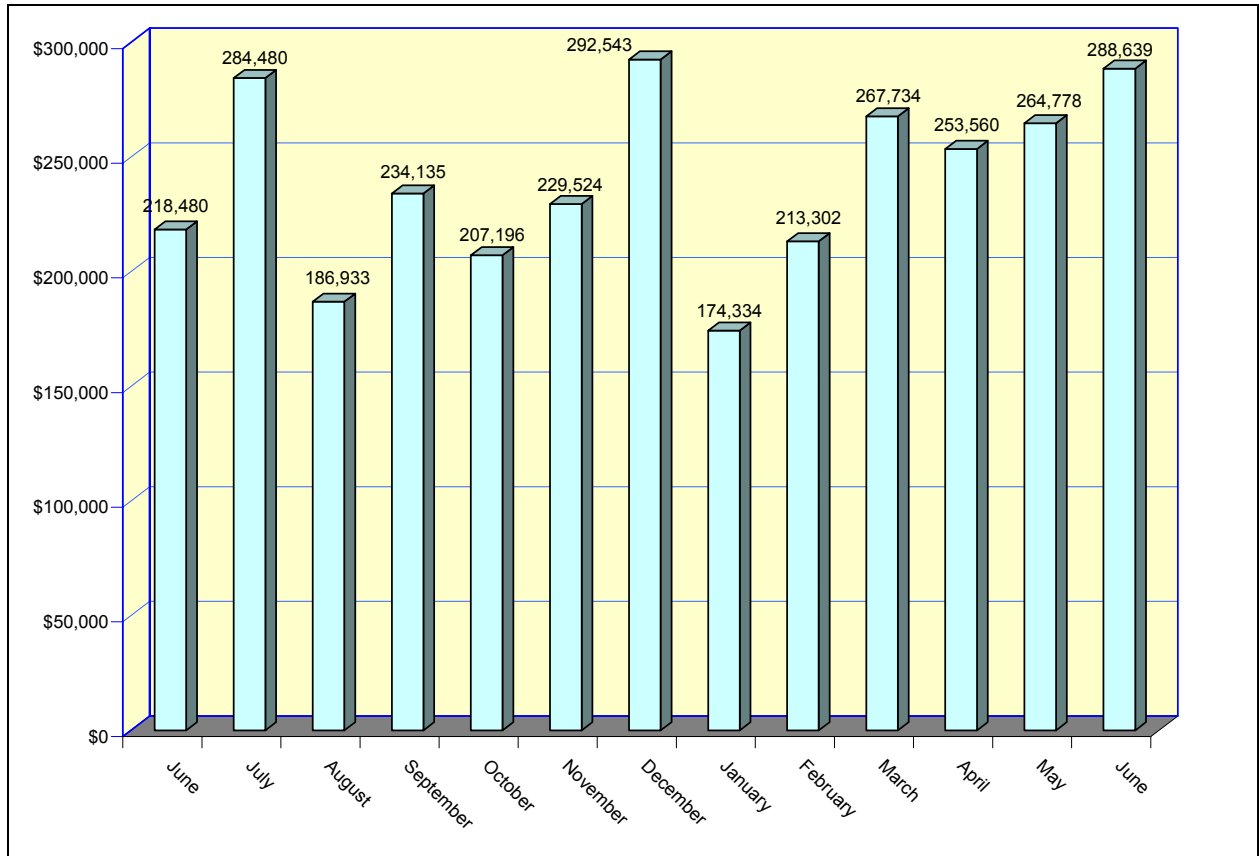
The Operator will operate approximately 160 dedicated Tower parking spaces. The annual revenue from this operation is \$213,766, with a standard parking charge of \$5 per car.

## **VISITOR INFORMATION - SUMMER 2003**

- ★ 23% of visitors are from San Antonio
- ★ 59% percent are from Texas
- ★ 62% are first time visitors; 69% of prior visitors had not been in over one year (average of 46 months)
- ★ 58% of visitors come to the Tower directly from their hotel, Riverwalk or Home
- ★ 53% drive to the Tower and another 39% walk to it; of those who walk, 93% walk under 10 blocks
- ★ 89% of the Restaurant visitors are first time users
- ★ 9% of visitors hear about the Tower from Marketing; another 9% hear about the Tower from other San Antonio sources (Visitor Information Center, River Barges, Concierge)
- ★ Largest Group Size is two adults (or children over 12) – 58%
- ★ 70% visit without children



**Total Food & Beverage Sales by Month**  
**June 2003-June 2003**



**Observation Deck**  
**Distribution of Attendance by Month and Type of Visitor**  
**August, 2002 - July, 2003**

Month	Attendance Distribution	Percent of Attendance by Type		
		Adult	Child	Senior
August	11%	73%	21%	6%
September	6%	76%	13%	11%
October	6%	73%	12%	15%
November	6%	75%	15%	11%
December	7%	71%	17%	12%
January	6%	74%	15%	10%
February	5%	73%	15%	12%
March	10%	71%	20%	9%
April	8%	72%	16%	11%
May	8%	72%	19%	9%
June	10%	70%	22%	9%
July	17%	65%	26%	9%
Total	100%	71%	19%	10%

**Observation Deck/One Elevator<sup>1</sup>**  
**Capacity Utilization**  
**August, 2002 - July, 2003**

Month	Operating Days Sun-Thu	Operating Days Fri-Sat	Operating Hours	Monthly Capacity	Monthly Attendance	Utilization of Capacity
August	21	10	413	111,510	29,082	26%
September	22	8	398	107,460	16,190	15%
October	23	8	411	110,970	15,766	14%
November	20	10	400	108,000	17,206	16%
December	23	8	411	110,970	20,294	18%
January	22	9	412	111,240	15,796	14%
February	20	8	372	100,440	13,419	13%
March	22	9	412	111,240	28,528	26%
April	22	8	398	107,460	22,996	21%
May	21	10	413	111,510	22,459	20%
June	22	8	398	107,460	27,036	25%
July	23	8	411	110,970	45,720	41%
Total	261	104	4,849	1,309,230	274,492	21%

<sup>1</sup> Capacity of one elevator at 270 visitors/hour (4 minute cycle @ 18 visitors per elevator)

## COMPETITIVE TOWERS AND BUILDINGS

### SELECTED TOWERS AND BUILDINGS MARKET PENETRATION\*

Table 1

#### Tower of the Americas Penetration Rates of Selected Towers and Buildings

Category	Tower of the Americas ^	Reunion Tower	Seattle Space Needle	Stratosphere	CN Tower	Empire State Building	Sears Tower
<b>Total Attendance</b>	<b>430,000</b>	<b>340,000</b>	<b>1,000,000</b>	<b>2,500,000</b>	<b>2,000,000</b>	<b>2,500,000</b>	<b>1,500,000</b>
Resident Market	86,000	68,000	200,000	500,000	400,000	500,000	300,000
Tourist Market	344,000	272,000	800,000	2,000,000	1,600,000	2,000,000	1,200,000
<b>Market Size</b>	<b>9,590,000</b>	<b>24,420,000</b>	<b>11,915,000</b>	<b>37,275,000</b>	<b>20,230,000</b>	<b>42,300,000</b>	<b>36,000,000</b>
Resident Market	1,590,000	3,520,000	3,275,000	1,425,000	4,230,000	17,300,000	12,000,000
Tourist Market	8,000,000	20,900,000	8,640,000	35,850,000	16,000,000	25,000,000	24,000,000
<b>Penetration Rate</b>	<b>4%</b>	<b>1%</b>	<b>8%</b>	<b>7%</b>	<b>10%</b>	<b>6%</b>	<b>4%</b>
Resident Market	5%	2%	6%	35%	9%	3%	3%
Tourist Market	4%	1%	9%	6%	10%	8%	5%

\* 80% of attendance is from the Tourist Market and 20% is from the Resident Market

^ Attendance is the total of Observation Deck and Restaurant visitors

## Selected Towers and Buildings

### Operating Elements

Area	Tower of the Americas	Reunion Tower	Seattle Space Needle	Stratosphere	CN Tower	Empire State Building	Sears Tower
<b>Tower</b>	Observation Deck Tower Restaurant	Observation Deck Antares Restaurant The Dome Lounge	Observation Deck Sky City Restaurant Private Dining	Observation Deck Top of the World Restaurant High Roller (Coaster) Space Shot Private Dining	Observation Deck Glass Floor Sky Pod 360 the Restaurant Horizons Café Photo FX Shop	Observation Deck Audio Tour	Observation Deck Exhibits
<b>Base</b>	Ticketing	Ticketing Hotel Retail Restaurants	Ticketing Space Base Gift Shop Monorail	Ticketing Casino Shops Dining Hotel Entertainment	Ticketing Human Quest Marketplace Marketplace Café The Edge Arcade Simulators Maple Leaf Cinema	Ticketing Simulator Retail Restaurants	Ticketing Retail Restaurants

**Selected San Antonio Attractions**

<b>Category</b>	<b>Tower of the Americas Observation Deck Only</b>	<b>Sea World San Antonio</b>	<b>Six Flags Fiesta Texas</b>	<b>Riverwalk</b>	<b>Yanaguana Cruise</b>	<b>Alamo</b>
Adult Admission Price	\$ 4.00	\$ 39.99	\$ 36.99	Free	\$ 6.00	Free
Attendance	285,000	1,600,000	1,875,000	7,000,000	600,000	2,000,000
Market Size	9,590,000	9,590,000	9,590,000	9,590,000	9,590,000	9,590,000
Penetration	3%	17%	20%	73%	6%	21%

### **North American Towers Comparison Summary**

\* Total Observation Deck and Restaurant Visitors

	<b>Tower of the Americas</b>	<b>Reunion Tower</b>	<b>Seattle Space Needle</b>	<b>Stratosphere</b>	<b>CN Tower</b>
<b>Location</b>	San Antonio, TX	Dallas, TX	Seattle, WA	Las Vegas, NV	Toronto, Ontario Canada
<b>Date Built</b>	1967	1976	1962	1996	1976
<b>Ownership Status</b>	Publicly Owned and Managed	Privately Owned and Managed	Privately Owned and Managed	Privately Owned and Managed	Publicly Owned Privately Managed
<b>Renovation Date Project Cost</b>	1996 \$1.238 Million	None in last 10 years	2000 \$20 Million	None	1998 \$17.7 Million
<b>Observation Level Admission (Adults/Children)</b>	\$4.00 / (Ages 4-11) \$1.50	\$2.00 /\$1.00	\$12.00 / (Ages 11-17) 10.00 (Ages 4-10) \$5.00	\$8.00 / \$8.00	\$16.32 / \$12.92  Canadian \$
<b>Restaurant Admission (Adults/Children)</b>	\$1.75 / .75¢ Entrée Minimum at Restaurant	Complimentary. No minimum table charge	Complimentary \$25.00 minimum per guest charge	Complimentary \$30.00 minimum per guest charge	Complimentary \$30.00 average per guest charge
<b>No. of Top House Restaurants/Bar</b>	1/1	1/1	1/1	1/1	2/1
<b>Annual Attendance (Approximate)</b>	430,000*	340,000	1,000,000	2,500,000	2,000,000



## **II. SCOPE OF SERVICES**

### **OVERALL MANAGEMENT**

The Operator will bear the overall responsibility for the day-to-day management and operation of Tower of the Americas which will include the following:

- ★ Ground Floor
- ★ Elevator Experience
- ★ Observation Deck
- ★ Restaurant
- ★ Tower Security
- ★ Any Other Proposed Attractions or Food Service
- ★ Parking

The relationship of the Operator to the City shall be that of a Tenant to a Landlord. The City shall have no direct supervision of or obligation to the employees of the Operator and any communication of employee matters shall be through the designated representatives of the Operator and the City. The Operator will operate upon its own credit and maintain a good credit rating as determined by the City.

The Operator is expected to propose, construct, implement and manage practical, innovative programs that enhance Tower of the Americas' experiential values as a major tourist destination. The Operator is expected to develop and manage the Tower of the Americas so that its potential for increased capacity and sales is realized. It will be required that at least 75% of the development of the total proposal package will be completed in the initial six months of the contract and that any future development plans are fully delineated.

The Operator's on-site management will review their Annual Operating, Marketing and Improvement Plan as well as Quality Assessment Reports with the City on an annual basis.

The City will, on a regular basis, conduct a comprehensive review and evaluation, through internal and external sources, of the Operator's performance during the initial years of the Agreement. This process will include all aspects of the agreement and the Operator's performance in attaining the goals and objectives as outlined in the Agreement.

## **PROGRAM DEVELOPMENT**

The operator will manage Tower of the Americas and each of its components in such a way that measurable improvements will be achieved in visitor experience and guest visitation. Operator shall maintain monthly; guest transactions, attendance and revenue data, and liquor and sales tax data, in general accounting forms and in a system and format approved by the City to easily verify monthly reports submitted by the Operator.

The Operator will provide attraction, food and beverage and merchandise at the Premises and at such locations as the City and the Operator will agree.

Specifically the offerings must:

- Be creative to maximize Tower attendance, including affordability of certain aspects
- Be compatible with San Antonio's image
- Have Visitor Service Standards on a par with First Class Industry Comparables
- Make the Tower a must see Destination
- Provide a fine dining experience emphasizing high quality regional cuisine
- Maximize Revenues to the Operator and the City

## **FINANCIAL ARRANGEMENTS**

The Operator will commit an investment for physical and programmatic improvements at Tower of the Americas in order to implement its proposed program of converting guest facilities. The Operator agrees to invest an additional amount as is necessary for point-of-sales systems and operating supplies to properly support the proposed Tower of the Americas' operations.

The Operator will commit to a mid-term investment in the Tower's public spaces of one percent (1%) of total gross sales achieved prior to this investment. As an example, if the operations at the Tower yield \$10 million in annual sales, you would have to invest \$750,000 in refreshing the public spaces at the Tower seven and one half years into the contract (\$10,000,000 in annual sales multiplied by 7.5 years multiplied by 1%). The City will require that these funds be escrowed annually for the purpose of reinvestment in the Tower. The City intends to maintain this maintenance investment component as part of any extended term.

The Operator will propose a payment to the City based on each component of the Tower operations. The commission categories and minimum acceptable rates are as follows:

	<b>Minimum Proposed of Gross Sales</b>
Restaurant and Bar Food/Non Alcohol/Alcohol Beverages	10%
Observation Deck	35%
Parking	30%
Retail	15%
Other (telescopes)	50%
Proposed new services	Proposed percentage

***Minimum Compensation:*** The Operator agrees to pay the City a minimum compensation of 80% of the proposed initial year sales multiplied by proposed commission structure. In each of the subsequent years of the Agreement, this minimum amount will adjust to 80% of the previous years actual income to the City, but never lower than minimum for the first year of the Agreement.

As an example, if the proposal has an annual sales projection of \$10 million and your blended rate achieved by applying your proposed commissions to the City is 22% (achieved by multiplying sales projection for each line of business in the table above by the proposed commission for that line of business), minimum rent for the first year would be \$1,760,000 (\$10 million in sales multiplied by 22% blended commission multiplied by 80%). If actual sales for the first year of operation are \$11 million, the minimum rent

will increase to \$1,936,000 (\$11 million in actual sales multiplied by 22% blended commission multiplied by 80%).

***Adjusted Gross Sales (AGS):*** Adjusted gross sales shall mean payments received by the Operator, its sub-contractors or and/or affiliates acting on Operator's behalf, whether in cash or in kind for the sale of tickets, merchandise, concessions and food and beverage less sales tax remitted to taxing authorities or refunds to the public.

The value of "in-kind" payments shall be deemed to be the value of the goods or services provided by Operator or any authorized subcontractor to the customer (public). If the goods or services are of the type for which a regulated fee has been established, the said fee shall be the value for such "in-kind" payments.

***Pre-Opening Expense:*** The Operator agrees to pay for all costs associated with pre-opening labor and expenses associated with all operations at Tower of the Americas. Pre-opening costs include the cost for sufficient labor, management and staff support, including wages and benefits prior to opening, recruitment, staff training, meals and supplies.

***The Operator Employee and Agent Wages, Benefits, Insurance and Taxes:*** The Operator will be solely responsible for all of its employees' and agents' wages, benefits, insurance and taxes. The Operator will pay all wages, salaries, and other amounts and benefits due such personnel in connection with their performance of services under this Agreement and as required by law. The Operator will be responsible for all reports and obligations respecting such personnel, including, but not limited to employee health and other benefits, social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance. The City is interested in identifying Operator sponsored internship opportunities.

***Statements and Records:*** The Operator will submit gross sales statements for each location to the City for each Accounting Period, and maintain books and records for gross sales in each operational location in accordance with generally accepted accounting principles pursuant to established business practices. The City, at its expense, reserves the right to audit all sales records and to seek remedy for inaccurate or fraudulent records. The Operator will retain all such records for the period required by law.

***Auditing Rights:*** The City reserves the right to audit the Contractor's and its subcontractors' books and records which the City determines relevant to this agreement for the purpose of determining the accuracy of the reported Adjusted Gross Sales and the Contractor's and its subcontractors' compliance with this agreement. Contractor should maintain its books and records in sufficient account detail to allow determination of sales revenue and taxes related to each category of revenue and the applicable percent pertaining to each category. Any refunds, allowances or adjustments shall be recorded in separate accounts. The City, if it so elects, has the right to require that any or all such books and records be submitted for audit to the City or to a Certified Public Accountant selected by the City, or any other City designee. If it shall be determined, as a result of such audit, that there has been a deficiency in the Adjusted Gross Sales as defined in the final negotiated contract, reported to the City or the payments due to the City hereunder,

then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if Adjusted Gross Sales or payments have been understated by more than two percent (2%) of the Gross Revenues reported to the City during the previous reporting period, then the entire expense of the audit shall be borne by the Contractor.

The Contractor shall annually engage an independent Certified Public Accountant (CPA) to perform agreed-upon procedures to analyze and assess the accuracy of the Contractor's revenues related to this agreement, for the preceding year, as of the anniversary date of the contract, in accordance with the *Statements on Standards for Attestation Engagements*, as well as any other standards as they may apply. The independent CPA shall furnish, within ninety (90) calendar days of the end of the contract year, the written report on agreed-upon procedures to the Director, Parks and Recreation, 114 W. Commerce St., 11<sup>th</sup> Floor, San Antonio, Texas 78205; with a duplicate original to the Director, Office of City Auditor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966. The independent CPA must state in his or her report an opinion whether the Adjusted Gross Sales reported, as required in the final negotiated agreement, to the City and the amounts paid to the City during the preceding year of the agreement, were made in accordance with the applicable terms of this agreement and are accurately stated.

The Contractor shall retain records for the agreement for the term plus five years, unless State law require longer retention.

Prior to commencement of operations hereunder, the Contractor shall provide the City with written documentation of the proposed revenue control system related to this agreement, including examples of reports, journals, ledgers, forms, etc. Thereafter, at the end of each contract year during the term of this agreement, the Contractor shall provide to the City updated documentation of its revenue control system. The City may require, during the term of this agreement, that the Contractor engage an independent CPA to report on the Contractor's management's assertion regarding the effectiveness of the Contractor's revenue control system.

***Purchasing of Tower Operations Supplies:*** The Operator will purchase and pay for all operational supplies and services utilized in their proposed Tower program. The Operator will purchase high quality products for the intended use. The City reserves the right, at its expense, to audit this information.

***Inventory of Food and Supplies:*** At the termination of this Agreement, all food, beverage and related perishable or disposable supplies will be the sole property of the Operator.

***Licenses and Permits:*** The Operator of Tower of the Americas will be required to procure a liquor license and all other necessary licenses and permits and will have to assure the continued validity of these license and permits throughout the term of the contract.

***Discounts and Reduced Pricing:*** The Operator must seek formal written approval by the City for all programs where discounts or reduced pricing for any engagement or sale is desired. This includes affiliates of the Operator for activity established as a result of this agreement.

***Annual Plan:*** The Operator will designate a Key Manager who will meet with City on an annual basis to present an Operating, Marketing and Improvement Plan, as well as to review external Quality Assessments (JD Powers or equal) on Guest Service for all Operations, Food Quality and Operating Standards.

***Prices:*** The Operator will submit proposed prices as part of their response to this RFP. Once these prices are approved, the Operator will require City approval for any price increases for attractions and non-fine dining food operations at the Tower which exceed 5% annually.

***Trademarks and Domain Names:*** The City shall require the Operator to execute a separate Trademark license agreement that at a minimum shall include:

“Operator agrees that the City shall own all right, title and interest in and to all world wide trademarks, service marks, trade names, domain names and trade dress (collectively referred to as the “Marks”) used as part of the business at the location including, but not limited to THE TOWER OF THE AMERICAS and all good will of the business in connection with the use and symbolized and associated therewith and all registrations therefore including the right to recover for the past, present and future infringement of the Marks by any party or parties with the right to sue solely in the City’s own name and collect damages and for the use and enjoyment of the City’s successors, assigns, or other legal representatives. All use of the Marks will inure to the sole and exclusive benefit of the City. Upon termination of this Agreement or shut down of the location for any reason, Lessee agrees to discontinue all use of all Marks.

The Operator shall provide to the City, its successors, assigns or other legal representatives, cooperation and assistance at the City’s request (including the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens and other documentation as may be reasonably required): (1) in the preparation and prosecution of any application for registration or any application for renewal of a registration or assignment covering any of the Marks; (2) in the prosecution or defense of any opposition, infringement or other proceedings that may arise in connection with any of the Marks including, but not limited to, testifying as to any facts relating to the Marks assigned herein and this Assignment; (3) in obtaining any additional trademark protection for the Marks that the City reasonably may deem appropriate that may be secured under the laws now or hereafter in effect in the United States or for all foreign countries; and (4) in the implementation or perfection of this Agreement.”

## **FACILITIES, INVENTORIES, EQUIPMENT AND MAINTENANCE**

***City Responsibilities:*** The City will deliver the spaces to the Operator in “as is” condition. The City will either 1: provide funding for a specific list of standard landlord improvements to be completed by the Operator, provided that Operator agrees to comply with state law competitive bidding requirements applicable to municipal funds and that have recently been amended to allow for sealed proposals and design build, or 2: City will make such landlord improvements. The City will assist the Operator in securing the proper permits to execute the proposed improvements to the Tower.

***Operator Responsibilities:*** The Operator will be responsible for all improvements to visitor and support areas. The City and the Operator will agree upon the construction budget to fully build-out the spaces. The Operator will be responsible for managing the construction and attainment of the construction budget. The Operator is also responsible for all additional costs or cost overruns required.

The Operator’s construction costs include, but are not limited to:

- ✓ Architectural, Mechanical, Electrical and Plumbing Service (MEP), Interior & Food Service Design Services
- ✓ Submissions to Development Services , Health, Fire Departments, Historic Design Review Commission, etc.
- ✓ Demolition
- ✓ Partitions and Interior Structures
- ✓ Equipment
- ✓ Infrastructure Code Issues, Inspection and Permitting Fees
- ✓ MEP Services
- ✓ Code and ADA Compliance within the Tower facilities
- ✓ Restrooms
- ✓ Finishes and Fixtures
- ✓ Telephone System
- ✓ Furniture
- ✓ Artwork and Signage
- ✓ Communications Systems
- ✓ Employee Amenities (Lockers & Bathrooms, etc.)
- ✓ Regulatory Approvals
- ✓ Other Improvements required to support your proposal

As part of the project, the Operator will comply with the necessary code requirements. Upon completion, the Operator shall provide notice of compliance with all code requirements and shall deliver a complete set of as-built CAD drawings to the City at the completion of construction.

***Historic Design Review Commission:*** Operator will initiate the review and approval process for all proposed interior and exterior improvements to the City's Historic Design Review Commission. City intends to assist Operator in the monitoring of City's permit review process to expedite the scheduling of improvements whenever possible.

***Additional Support Space:*** The City also has buildings within the area which can serve as additional support for your Tower operations. If such buildings are required, please specify your space needs and your square footage rent proposal for this space. Any use of existing City space is dependent upon the City's relocation of existing functions to other areas.

***Structural Repair, Replacement and Maintenance:*** The City will furnish building maintenance services defined Tower infrastructure, elevator systems, roof, utility systems to the building.

The City will make all facility repairs and replacements it deems necessary, and will be responsible for compliance with all federal, state and local laws and regulations with respect to the facilities it provides. Nothing will be construed as altering or limiting any duty the Operator may hold to comply with all applicable federal, state, and local health and safety laws and regulations in the performance of its services.

***Operational Maintenance Services:*** The Operator will be responsible, at its expense, for maintaining air conditioning, heat, and such utility services as are reasonably required for the efficient operation of the Tower facilities. The Operator will facilitate and coordinate the scheduling of these services. The Operator will be responsible, at its sole expense to clean and maintain the kitchen ductwork, plenum chambers and roof fans. The Operator will be responsible for the proper temporary storage and removal of refuse to the designated removal point. The Operator is additionally responsible for the temporary storage, removal and recycling of waste oils.

***Equipment Maintenance:*** The Operator will be responsible for the cost of service contracts to properly maintain all Operations equipment, repairs and maintenance. The Operator will, at no cost to the City, maintain, repair or replace said facilities and equipment in the event of damage caused by negligent use by the Operator.

***Telephone and Data Communications:*** The Operator will provide telephone service to all locations sufficient for the reasonable conduct of business. The Operator will be responsible for paying all local and long distance telephone billings. The Operator will, at no cost to the City, repair or replace said telephone equipment in the event of damage caused by negligent use by the Operator.

***Furniture, Fixtures and Equipment:*** The Operator will maintain such Furniture, Fixtures and Equipment to a high standard at its expense. All attached or affixed Furniture, Fixtures and Equipment purchased by the Operator during the term of the Agreement will become the sole property of the City at the termination of the Agreement.

***Service wares and Small Expendable Equipment:*** The Operator will furnish an adequate inventory of Servicewares and Small Expendable Equipment. The Operator



will maintain such inventory at its expense. Upon termination of the Agreement, these items will become the sole property of the Operator. If, at any time, the Operator is to provide additional service, the Operator will be responsible for increasing, at its own expense, the inventories required for the additional service.

***Vehicles:*** The Operator will provide its own vehicles for use in the Tower operations. The Operator will be responsible for the vehicles' gas, oil, maintenance and repair, and automobile liability insurance. The Operator will defend, indemnify and hold harmless the City and its officers from and against all claims, liability, loss and expense which results from the Operator's use of the Operator's vehicle. This provision will survive the termination of the Agreement.

***Sanitation:*** The Operator will be responsible for setting and maintaining a high standard of sanitation in all Tower operations. The Operator will be responsible for housekeeping and sanitation in food preparation, storage, serving areas (including windows, walls, ceilings, floors and seating) and locker rooms.

Both the Operator and the City will assume sanitary responsibilities as currently designated. The City will be responsible for any costs involved in setting up and cleaning the premises for functions not managed by the Operator. The City will be responsible for promptly responding to all issues on Sanitation Inspection Reports which is its responsibility.

***Laundry, Linen and Uniforms:*** The Operator will be responsible for costs of all laundry, linen and uniform service.

***Utilities:*** The Operator will be responsible for the cost of utilities consumed in the Tower operation and proposed development.

***Insurance:*** The Operator shall provide insurance coverage as listed in Attachment G.

***Security:*** The Operator will be responsible for providing security within the Tower, around its base and in all parking areas utilized. The City will provide the Operator with guidelines relative to this security, which may change from time to time.

***Smoking Ordinance:*** The Operator will comply with all regulations relating to providing the City's smoking ordinance.

***Operating Standards:*** The Operator will establish a customer/staff satisfaction measurement system (JD Powers or equal) that will benchmark the status of all current programs and services and measure the advancements on an annual basis. The Operator at Tower of the Americas shall achieve and maintain 85% positive ratings on all monthly Mystery Shopper visitations and sanitation audits. Ratings of less than 85% on either of these third party conducted reports will require immediate corrective measures.

***Force Majeure:*** Neither party will be responsible to the other for any losses resulting from the failure to perform any terms or provisions of this Agreement, except for monies owed, if the party's failure to perform is attributable to war, riot, or other disorder, strike or other work stoppage; fire; flood; or any other act not within the control of the party

whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent. Any such occurrence will be referred to as a "Force Majeure." In the event of a Force Majeure which interferes with the Tower Operations program, upon request, the Operator will take all reasonable steps to continue to provide service upon terms and conditions satisfactory to Operator and the City.

***Termination for Cause:*** There will be causes identified in the final contract which may result in termination of the Operating agreement. These clauses will be based on the following criteria:

- 1) Default on payments to the City from the Tower operations after a typical period to cure such defaults
- 2) Failure of the Operator at any time during the term of this Agreement to meet stated minimum quality assurance standards
- 3) Loss of licenses or permits required to provide the services delineated in your proposal
- 4) Failure to achieve minimum sales levels, which shall be:
  - a. Restaurant Operations - \$3.8 million in Annual Sales
  - b. Tower Observation Deck - \$1.5 million in Annual Sales
- 5) Bankruptcy by the Operator

Settlement for termination under any of these clauses will be repayment of the Operator's unamortized portion of their initial capital investment.

***Proposal and Performance Bonds:*** A Proposal Bond in the amount of \$10,000 must accompany any proposal to demonstrate good faith in the submission and to show the Proposer's intent to enter into a Contract with the City of San Antonio and to furnish any necessary Performance Bond and required assurances. A deposit in the form of a Cashier's Check or Certified Check made payable to the City of San Antonio may be substituted for a Proposal Bond.

Said deposit or bond shall be refunded or released to all Proposers whose proposals are not accepted by the City. Such refund shall occur immediately following the City Council's actions by ordinance authorizing acceptance of one of the proposals received by the City.

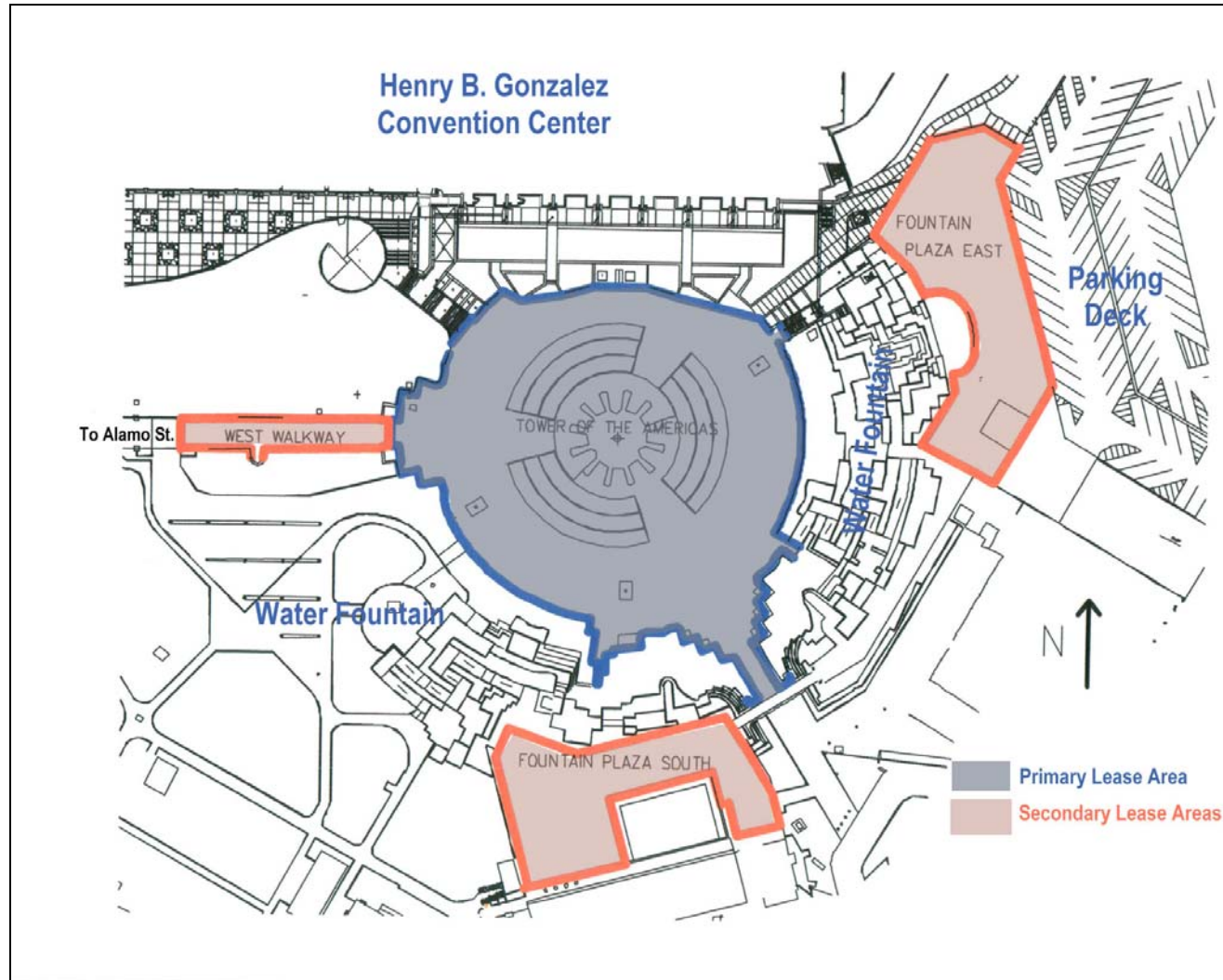
The Proposal Bond of the Proposer whose proposal has been accepted by the City will be returned to that Proposer upon receipt of an \$850,000 Performance Bond for the term of the contract to be required as part of the final negotiated agreement. Failure to provide the required \$850,000 Performance Bond or other acceptable instrument, such as an irrevocable letter of credit, to the City as required in this RFP or final negotiated agreement shall result in the forfeiture of the Proposer's \$10,000 Proposal Bond.

### **III. TERM OF CONTRACT**

***Term of Agreement:*** The preferred term of the Agreement is fifteen (15) years, commencing on September 1, 2004. Based on performance under this initial agreement, the Operator and the City shall have mutual rights to renew the contract for an additional term of ten (10) years at fair market rates.

The City grants the Operator exclusivity on all Operations, including Attractions, Retail and Food and Beverage within the Primary Lease Area of the Tower, and first right of refusal on all of these within the Secondary Lease Areas, as defined on the following page. The City will preserve both emergency vehicular and pedestrian access within the Primary Lease Area.

## Proposed Lease Area



#### **IV. PRE-PROPOSAL CONFERENCE**

A Pre-Proposal Conference will be held at the Henry B. Gonzalez Convention Center, San Antonio, Texas in the Executive Assembly Room at 9:00 a.m. on December 4, 2003. This Pre-Proposal conference will include a walking tour of the Tower and adjacent facilities. Operators are encouraged to prepare and submit their questions in writing at least five calendar days in advance of the Pre-Proposal Conference in order to expedite the proceedings. The City's responses to questions received by this due date may be distributed at the Pre-Proposal Conference and posted on the City's website at <http://www.sanantonio.gov/rfp/>. Attendance at the Pre-Proposal Conference is optional, but strongly encouraged.

Please call (210) 207-8500 for location and directions to the Executive Assembly Room.

This meeting site is accessible to persons with disabilities. Parking is available. Auxiliary aids and services are available upon request. Interpretation for the deaf must be requested forty-eight (48) hours prior to the meeting; call (210) 207-7245 VTTY for assistance.

## **V. PROPOSAL REQUIREMENTS**

Operator's Proposal shall include the following items in the following sequence and shall be numbered to correspond with the outline below:

### **A. PROPOSAL FOR TOWER OF THE AMERICAS**

1.0 EXECUTIVE SUMMARY: Prepare an Executive Summary that concisely communicates your proposal and deal points. This Summary shall not exceed five single-sided pages.

2.0 OPERATING PLAN: Detail your proposed direction for each of the Tower of the Americas' programs using the format of a strategic business plan, including:

2.1 Observation Deck, Ground Floor, Exterior Grounds, Elevators, and Other Proposed Attractions

- a. Directional Philosophy
- b. Key Goals
- c. New Offerings
- d. Experiential Program
- e. Management and Staffing Plan
- f. Prices, including Adult, Child, Group and School Group Rates  
Include any community outreach efforts such as reduced pricing during certain times
- g. Hours of Operation
- h. Security and Safety
- i. Costuming and Uniforms
- j. Points of Uniqueness

2.2 Revolving Restaurant and any other new Food or Beverage Operations

- a. Conceptual Direction
- b. Key Goals
- c. Style of Service
- d. Restaurant Name
- e. Proposed Menus
  1. Restaurant
  2. Lounge
  3. Catering and Group Tours
- f. Prices
- g. Management and Staffing Plan
- h. Hours of Operation
- i. Security and Safety
- j. Proposed interior design, décor and servicewares
- k. Costuming and Uniforms
- l. Points of Uniqueness

2.3 Retail Merchandise

- a. Directional Philosophy
- b. Key Goals
- c. Locations and Sizing
- d. Proposed Merchandise

- e. Prices
- f. Management and Staffing Plan
- g. Hours of Operation
- h. Costuming and Uniforms
- i. Points of Uniqueness

#### 2.4 Parking

- a. Directional Philosophy
- b. Key Goals
- c. Proposed Improvements
- d. Proposed Rates
- e. Costuming and Uniforms
- f. Management and Staffing Plan
- g. Security and Safety

2.5 Detail any other physical or operational changes that you propose and how they would impact the visitor experience at the Tower.

2.6 Submit your proposed operating standards in the areas of:

- Service
- Quality Assurance
- Sanitation
- Safety
- Training/Internships
- Visitor Satisfaction
- Security
- Sales Control Systems

**IMPROVEMENT PLAN:** Summarize the extent of improvements that you will undertake in order to implement the program in No. 2 above. Include a proposed timeline for the implementation of these changes.

3.1 Detail your implementation plan, tying specific actions to specific dates, for the management and operation of Tower of the Americas.

4.0 **MARKETING PLAN:** Detail your marketing plan and expenditure levels for the Tower and its components. The minimum acceptable Marketing Spending level (direct spending on Marketing media) will be 5% of Adjusted Gross Sales.

City may support these efforts by providing the Operator access to City Properties, such as:

- River Walk Tower Ticket Booth, Historia Elevator Facility
- Convention Center Brochures
- Barge Operator Narratives (with cooperation with the Operator)
- City of San Antonio Visitor Information Center

5.0 Delineate your proposed program for measuring customer/staff satisfaction.

**B. FINANCIAL PROPOSAL:** List all projected revenues and proposed rents and commissions to the City (Attachments A and B) and include an itemized summary of your proposed facility investment.

Also, submit a copy of your firm's audited financial statements for the most three (3) recent years **and** a credit rating report from Dunn and Bradstreet (D&B) and one of the national regional rating agencies. Clearly identify what information is proprietary.

C. OPERATOR QUALIFICATION GENERAL QUESTIONNAIRE: Completed Operator Qualification General Questionnaire. (Attachment C).

D. DISCRETIONARY CONTRACTS DISCLOSURE: Completed Discretionary Contracts Disclosure Form. (Attachment D). If Operator is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and return this form with the proposal.

E. LITIGATION DISCLOSURE: Completed Litigation Disclosure Form. (Attachment E). If Operator is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and return this form with the proposal.

F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) POLICY REQUIREMENTS: Completed SBEDA forms (Attachment F).

G. REFERENCES AND QUALIFICATIONS:

1. Background of Operator and support personnel, including professional qualifications and length of time working in Operator's company. Include résumés of key personnel for services that Operator proposes to perform the proposed operations.
2. Relevant experience of Operator as it relates to the scope of services contemplated by the RFP.
3. If Operator has provided services for the City in the past, identify the name of the project and the department for which Operator provided those services. If Operator is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.
4. Operator shall provide three (3) references for whom Operator has provided similar services. Include current phone number for each reference.

H. PROPOSAL BOND: Operator shall submit a \$10,000 proposal bond, certified check or cashiers check payable to the City of San Antonio with proposal.

I. SIGNATURE PAGE: Operator must complete and include Signature Page with proposal. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. (Attachment I)

J. PROPOSAL CHECKLIST:

Completed proposal checklist. (Attachment J)

Operator is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE DOCUMENTS MAY RESULT IN THE OPERATOR'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.



## **VI. AMENDMENTS TO RFP**

Changes or amendments to this RFP may be posted on the City's website at <http://www.sanantonio.gov/rfp/>. It is Operator's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. An Operator who does not have access to the Internet must notify City in accordance with Section VIII, Restrictions on Communication, that Operator wishes to receive copies of amendments to this RFP by mail.

## **VII. SUBMISSION OF PROPOSALS**

A. Operator shall submit ten (10) copies (one original, nine duplicates) of the Proposal, the original signed in ink, in a sealed package, clearly marked on the front of the package "Tower of the Americas." All Proposals must be received in the City Clerk's office no later than 4 p.m. central time, January 9, 2004 at the address below. Any Proposal received after this time shall not be considered.

Mailing Address:

City Clerk's Office, Attn: Parks and Recreation Department  
P.O. Box 839966,  
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Parks and Recreation Department  
100 Military Plaza  
2<sup>nd</sup> floor, City Hall  
San Antonio, Texas 78205.

Proposals sent by facsimile or email will not be accepted.

- B. Proposal Format: Each proposal shall be typewritten and submitted on 8 ½" x 11" white paper inside a three ring binder. Font size shall be no less than 12 point type. All pages shall be double spaced and printed on one side only. Margins shall be no less than ¾" around the perimeter of each page. Each page shall be numbered. Electronic files shall not be included as part of the proposal; compact disks, videotapes and/or computer disks submitted as part of the proposal shall not be considered. Each proposal must include the sections and attachments in the sequence listed in the Proposal Requirements Section, and each section and attachment must be divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal.
- C. Operators who submit responses to this RFP shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Operators and limited liability company Operators shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal. If you do not have a Comptroller's Taxpayer Number, please include your Federal Identification Number.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the signature page of its proposal, the Director of Parks and Recreation shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

- D. All provisions in Operator's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- E. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Operator should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Operator may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Operator that is associated with the preparation of the Proposal, the Pre-Proposal conference, if any, or during any phase of the selection process, shall be borne solely by Operator.

## VIII. RESTRICTIONS ON COMMUNICATION

Once the RFP has been released, Proposers are prohibited from communicating with City staff regarding the RFP or proposals, with the following exceptions:

- A. Questions concerning this RFP shall be directed, in writing only, to:

The Parks and Recreation Department  
Attn: Gilbert Hernandez, Manager  
Contract Services & Special Facilities Division  
114 W. Commerce Street, 11<sup>th</sup> Floor  
San Antonio, TX 78205.

Verbal questions and explanations are not permitted other than as described by this section and during interviews, if any. It is suggested that all questions be sent by certified mail, return receipt requested; however, electronic submissions by facsimile or e-mail will be accepted at fax number (210) 207-7946, or e-mail [gilberth@sanantonio.gov](mailto:gilberth@sanantonio.gov).

No inquiries or questions will be answered if received after 4:00 P.M. on December 19, 2003, to allow ample time for distribution of answers and/or amendments to this RFP. Operators wishing to receive copies of the questions and their responses must notify the City's Contact Person in writing prior to the date and time the questions are due.

- B. Proposers shall not contact City employees and/or Fessel International staff and contractors before an award has been made, except as set out herein. Violation of this provision by Operator or his agent may lead to disqualification of his proposal from consideration.
- C. The City reserves the right to contact any Proposer for clarification after responses are opened and/or to further negotiate with any Operator if such is deemed desirable by City.

## **IX. EVALUATION CRITERIA**

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Operators for interviews. If the City elects to conduct interviews, Operators may be interviewed and re-scored based upon this same criteria, or other criteria to be determined by the selection committee. The City may also request additional information from Operators at any time prior to final approval of a selected Operator, as well as collect information from any source in order to conduct a more thorough evaluation.

The City reserves the right to select one, or more, or none of the Operators to provide services. The City reserves the right to negotiate any conditions of this proposal which it deems to be in the best interest of the City. Final approval of a selected Operator is subject to the action of the City of San Antonio City Council.

### **Evaluation criteria:**

#### **A. Quality of Proposal (30%)**

1. Excitement and Originality (12 points)
  - a. Restaurant
    - i. Theme and story
    - ii. Quality statement
    - iii. Menu & food styling
    - iv. Service plan
    - v. Staffing plan
  - b. Observation Deck, Ground Floor and Elevator Experience
    - i. Revitalization
    - ii. New Visitor Experiences
  - c. Retail
    - i. Merchandise Strategy
  - d. New Programs
    - i. New exciting guest experiences
    - ii. New levels of sales and profits
2. Goals and initiatives are realistically executable (6 points)
3. Marketing plan (6 points)
4. Price strategy (6 points)

B. Operator's background and capability to provide the services requested (30%).

1. Business History of the Respondent (10 points)
2. Relevant experience and reputation of Operator and their Culinary Staff (10 points)
3. Respondent's capacity to execute the proposed plan (10 points)

C. Evaluation of the Proposed Economic Terms (20%)

1. Capital Investment and Timeline (10 points)
2. Ongoing Financial considerations (10 points)

D. Small Business Economic Development Advocacy Program (SBEDA) (20%):

1. A maximum of ten percentage (10) points for Local Business Enterprises (LBEs).

Operators who have a local branch office will receive six percent (6%) of the selection points.

Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors (i.e. – 50% to local = 5 points).

2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).

Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs (i.e. – 50% to HUEs = 2.5 points).

HUEs must be certified by the City's certifying agency or approved by the Director of Economic Development or designee.

3. A maximum of five percentage (5%) points for Prime Contractor compliance with the Small Business Economic Development Advocacy (SBEDA) policy:
  - i. One percent (1%) for submission/approval of the Good Faith Effort Plan.
  - ii. One percent (1%) for meeting/exceeding the MBE goal.
  - iii. One percent (1%) for meeting/exceeding the WBE goal.
  - iv. One percent (1%) for meeting/exceeding the AABE goal.
  - v. One percent (1%) for meeting/exceeding the SBE goal.

## **X. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Operator(s) whose Proposal(s) is deemed most advantageous to City upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of an Operator is subject to City Council approval.
- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.
- E. No work shall commence until City signs the contract document(s) and Operator(s) provides the necessary evidence of insurance and bonds as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Operator and commence negotiations with another Operator.
- F. This RFP does not commit City to enter into a Contract or award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Operator will be required to comply with the Insurance and Indemnity Requirements established herein.
- H. Conflicts of Interest. Operator acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent; child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Operator is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Part B, Section 10 of the City's Ethics Code. (Discretionary Contracts Disclosure – Attachment D)

- I. Independent Contractor. Operator agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Operator's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- J. The City of San Antonio reserves the right to approve all operating concepts, show elements, menus and merchandise mix. This will include the approval of which operations serve alcoholic beverages and how they are sold.
- K. The City of San Antonio reserves the right to set reasonable rules of Operation. Violation of the Operating Standards may trigger the termination of the Operating Agreement.
- L. City may set operating hours for Tower of the Americas, which shall be the same hours for the operation of the Food and Merchandise locations unless otherwise submitted in your proposal and approved by the City.

As a minimum, the hours will be:

☐ Restaurant 11 a.m. to 3 p.m. Daily

5 p.m. to 10 p.m. Daily (11 p.m. Friday and Saturday)

☐ Observation Deck 10 a.m. to Midnight Daily

- M. No sale, assignment, sub-lease, joint venture or any change of ownership, including the sale or transfer of issued and outstanding stock of the Operator shall occur without prior approval of the City of San Antonio
- N. Fessel International, its employees, consultants and sub-contractors are ineligible of receiving award of a contract resulting from this RFP.



## **XI. SCHEDULE OF EVENTS**

Following is a list of key dates with respect to this RFP:

RFP Solicitation Period Starts	October 28, 2003
Pre-Proposal Conference	December 4, 2003 9:00 a.m.
Final Questions Accepted	December 19, 2003 4:00 p.m.
RFP Closes, Proposals Due	January 9, 2004 4:00 p.m.
Proposals evaluated & Selected Interviews	January 12, 2004 through January 31, 2004
City Council Review and Approval	February, 2004

## **ATTACHMENTS**

**ATTACHMENT A**  
**Projected Sales - Years One through Fifteen**

	YEAR							
	1	2	3	4	5	6	7	8
Restaurant								
Observation Deck								
Parking								
Retail								
Other (telescopes, etc.) Provide Detail								
Proposed new services Provide Detail								
	YEAR							
	9	10	11	12	13	14	15	
Restaurant								
Observation Deck								
Parking								
Retail								
Other (telescopes, etc.) Provide Detail								
Proposed new services Provide Detail								

## ATTACHMENT B

### Financial Terms

Propose Percentage of Gross Sales to be Paid by Category		
	Acceptable Minimum	Your Proposal*
Restaurant	10%	
Observation Deck	35%	
Parking	30%	
Retail	15%	
Other (telescopes)	50%	
Proposed new services	=	

\* Must be a single percentage, not a range

\*\* Provide an itemized summary

<b>Minimum Rent</b> <b>(No less than 75% of Total Percentage Rent)</b>
\$ _____
<b>Your proposed facility investment**</b>
\$ _____
<p style="text-align: center;"><b>Your agreement to commit and escrow funds for a mid-term investment of one percent (1%) of gross sales.</b></p> <p>Agreed _____  <i>(Sign and date your authorized signature)</i></p>

## ATTACHMENT C

### OPERATOR QUALIFICATION GENERAL QUESTIONNAIRE

1. Name/Name of Agency/Company: \_\_\_\_\_
2. Address: \_\_\_\_\_  
\_\_\_\_\_
3. Telephone/FAX: \_\_\_\_\_
4. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its proposal?  
Yes\_\_\_\_ No\_\_\_\_
5. Is your Company authorized and/or licensed to do business in Texas?  
Yes\_\_\_\_ No\_\_\_\_
6. Where is the Company's corporate headquarters located? \_\_\_\_\_
7. a. Does the Company have an office located in San Antonio, Texas?  
  
Yes\_\_\_\_ No\_\_\_\_  
  
b. If the answer to the previous question is "yes", how long has the Company conducted business from its San Antonio office?  
  
\_\_\_\_\_(years) \_\_\_\_\_(months)  
  
c. State the number of full-time employees at the San Antonio office. \_\_\_\_\_
8. a. If the Company does not have a San Antonio office, does the Company have an office located in Bexar County, Texas?  
  
Yes\_\_\_\_ No\_\_\_\_  
  
b. If the answer to the previous question is yes, how long has the Company conducted business from its Bexar County office?  
  
\_\_\_\_\_(years) \_\_\_\_\_(months)  
  
c. State the number of full-time employees at the Bexar County office. \_\_\_\_\_

9. Has the Company or any of its principals been debarred or suspended from contracting with any public entity? Yes\_\_\_\_ No\_\_\_\_

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension. \_\_\_\_

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10. Indicate person whom the City may contact concerning your proposal for setting dates for meetings.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

Email: \_\_\_\_\_

#### 11. Surety Information

Have you or the Company ever had a bond or surety canceled or forfeited? Yes ( )

No ( )

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. \_\_\_\_\_

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#### 12. Bankruptcy Information

Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes ( ) No ( )

If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. \_\_\_\_\_

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13. Provide any other names under which your business has operated within the last 10 years.

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## ATTACHMENT D

### City of San Antonio Discretionary Contracts Disclosure\*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2*

*Attach additional sheets if space provided is not sufficient.*

*State "Not Applicable" for questions that do not apply.*

**\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.**

#### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

--

(2) the identity of any **business entity** that would be a party to the discretionary contract:

--

**and** the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

--

**and** the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

--

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

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#### **Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:

#### **Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

<b>Signature:</b>	<b>Title:</b> <b>Company:</b>	<b>Date:</b>



## ATTACHMENT E

### LITIGATION DISCLOSURE

**Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.**

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years? Including liens for non-payment from suppliers.

Circle One

YES

NO

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.**

## ATTACHMENT F

### **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

1. **Small Business Participation**

Pursuant to Ordinance No. 96754, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the SBEDA policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Economic Development Advocacy Provisions:

- a. **SBEDA Program:** Small Business Economic Development Advocacy Program designed to promote the utilization and participation of Local, Minority, Women, and African-American Owned Business Enterprises in City sponsored contract opportunities.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for small business. All firms meeting this threshold will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County or employ Bexar County residents for at least twenty-five (25%) of the entire company workforce for use at the local branch office.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the

enterprise shall be headquartered in Bexar County for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBES's category of contracting for at least one year.

- e. **Woman Business Enterprise (WBE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County for any length of time or shall be doing business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.
- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least one year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

<b>MBE</b>	<b>31%</b>
<b>WBE</b>	<b>10%</b>
<b>AABE</b>	<b>2.2%</b>
<b>SBE</b>	<b>50%</b>

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is

certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as a AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the SBEDA goals under this scenario would be as follows:

	City's SBEDA Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the SBEDA policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company A will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE.

**Prime Contractor Y** compliance with the SBEDA goals would be as follows:

	City's SBEDA Goals	Prime Contractor X's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the SBEDA policy.

4. **Good Faith Effort Required**

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include the GFEP and does not receive approval of the GFEP by the Economic Development Department shall be declared non-responsive, and excluded from consideration.**

5. **MBE-WBE-AABE Certification Required**

Only companies certified as MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

6. **SBEDA Information**

Interested contractors/proposers are encouraged to contact the Small Business Outreach Office for information regarding the City's SBEDA Policy. Please call (210) 207-3900 or FAX: (210) 207-8151.

Over 200/Rev. 5/7/2003

## GOOD FAITH EFFORT PLAN

**NAME OF COMPANY:** \_\_\_\_\_

**PROJECT NAME:**

\_\_\_\_\_

1. Indicate all MBE-WBE-AABE-SBE subcontractors proposed for this contract.  
(Use additional sheets as needed.)

NAME OF SUBCONTRACTOR	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE- AABE CERTIFICATION NUMBER	SBE (Y/N)

Only companies certified as MBE, WBE, AABE, or SBE by the City of San Antonio or its certifying organization can be applied towards the contracting goals. All MBE-WBE-AABE-SBE subcontractors must submit a copy of certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a subcontractor is not certified, please call the Small Business Outreach Division at (210) 207-3900 for information and details and how subcontractors can obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Affirmed List of Subcontractors form).

**NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.**

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

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3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

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4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

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5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

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6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBE s.

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*Good Faith Effort Plan*

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	HUE (Y/N)	REASON FOR REJECTION

8. Please attach a copy of your company’s MBE-WBE-AABE-SBE policy.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.



10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

\_\_\_\_\_  
TITLE OF OFFICIAL

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PHONE

**FOR CITY USE**

Plan Reviewed By: \_\_\_\_\_

Recommendation:                      Approval \_\_\_\_\_

Denial \_\_\_\_\_

Action Taken:                              Approved \_\_\_\_\_

Denied \_\_\_\_\_

\_\_\_\_\_  
DIRECTOR OF ECONOMIC DEVELOPMENT

**ATTACHMENT G**

**INSURANCE REQUIREMENTS**

	<b>TYPE</b>	<b>AMOUNT</b>
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:  a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.** Explosion, collapse, underground h. Host Liquor Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence \$5,000,000 general aggregate or its equivalent in umbrella or excess liability coverage  \$50,000
3.	Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
4.	Motor truck cargo insurance including loading and unloading; written on an inland marine form and an all risk basis	\$1,000,000
5.	Property Insurance: For physical damage to the property of Operator, including improvements and better to the Leased Premises	Coverage for a minimum of eighty (80%) percent of the actual cash value of Operator's property
6.	Liquor Liability	\$1,000,000 per occurrence, aggregate of \$3,000,000

\* Alternate Plans are subject to approval by the City's Risk Manager

## **ATTACHMENT H**

### **INDEMNITY REQUIREMENTS**

Proposal shall contain assurances of indemnity sufficient to protect City for any occurrence or tort arising from the project. Such assurances will include a disclosure of property and casualty insurance limits concurrent with the risk exposure.

**RESPONDENT, if selected, covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT's, if selected, activities under this CONTRACT, including any acts or omissions of RESPONDENT, if selected, , any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, if selected, known to RESPONDENT, if selected, related to or arising out of RESPONDENT's, if selected, activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at RESPONDENT's, if selected, cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.**

**It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by RESPONDENT, if selected, to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENCE ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage.**

**RESPONDENT, if selected, further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, if selected, known to CONSULTANT related to or arising out of contractor's activities under this contract.**

## ATTACHMENT I

### SIGNATURE PAGE

“✓” Check box that indicates business structure of Operator

- ☐ Individual or Proprietorship
- ☐ Partnership or Joint Venture
- ☐ Corporation

The undersigned certifies that (s)he is \_\_\_\_\_ (title) of the Operator entity named below; that (s)he is designated to sign this Proposal Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Proposal as required by this RFP, and has the requisite authority to execute an Agreement on behalf of Operator, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity is:

\_\_\_\_\_  
11-digit Comptroller's Taxpayer Number. If you do not have a Comptroller's Taxpayer Number, please include your Federal Identification Number here

\_\_\_\_\_  
Operator Organization Name (DBA also required if Individual or Proprietorship)

By: \_\_\_\_\_

By: \_\_\_\_\_  
(If Operator is a Joint Venture, an authorized signature from a representative of each party is required)

\_\_\_\_\_  
Employer Identification Number

By signature above, Operator agrees to the following:

1. If awarded a contract in response to this RFP, Operator will be able and willing to comply with the insurance and indemnification requirements set out in Attachments G and H.
2. If awarded a contract in response to this RFP, Operator will be able and willing to comply with all representations made by Operator in Operator's Proposal and during Proposal process.
3. Operator has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
4. Operator agrees to fully and truthfully submit a General Questionnaire and with understanding failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.

**ATTACHMENT J**

**PROPOSAL CHECKLIST**

This checklist is to help the Operator ensure that all required documents have been included in its proposal.

<b>Document</b>	<b>Check or Initial to Indicate Document is Attached to Proposal</b>
Executive Summary	
Proposal for Tower of the Americas	
*Financial Terms (Attachments A&B in RFP) and 3 Years Audited Financial Statements	
Operator Qualification General Questionnaire (Attachment C in RFP)	
*Discretionary Contracts Disclosure (Attachment D in RFP)	
Litigation Disclosure (Attachment E in RFP)	
*Good Faith Effort Plan (Attachment F in RFP)	
References and Qualifications (Proposal Requirements Section of RFP)	
Proposal Bond or Irrevocable Letter of Credit	
Proposal Checklist	
*Signature Page	
10 Copies of Proposal (1 original, 9 duplicates)	

**\*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**